

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	EB Docket No. 03-152
	)	
<b>WILLIAM L. ZAWILA</b>	)	Facility ID No. 72672
	)	
Permittee of FM Station KNKS,	)	
Coalinga, California	)	
	)	
<b>AVENAL EDUCATIONAL SERVICES,</b>	)	Facility ID No. 3365
<b>INC.</b>	)	
	)	
Permittee of FM Station KAAX,	)	
Avenal, California	)	
	)	Facility ID No. 9993
<b>CENTRAL VALLEY EDUCATIONAL</b>	)	
<b>SERVICES, INC.</b>	)	
	)	
Permittee of FM Station KAJP,	)	
Firebaugh, California	)	
	)	Facility ID No. 22030
<b>H. L. CHARLES D/B/A FORD CITY</b>	)	
<b>BROADCASTING</b>	)	
	)	
Permittee of FM Station KZPE,	)	
Ford City, California	)	
	)	Facility ID No. 37725
<b>LINDA WARE D/B/A LINDSAY</b>	)	
<b>BROADCASTING</b>	)	
	)	
Licensee of FM Station KZPO,	)	
Lindsay, California	)	
	)	File No. BR-19970804YJ
<b>WESTERN PACIFIC BROADCASTING,</b>	)	Facility ID No. 71936
<b>INC.</b>	)	
	)	
For Renewal of License for AM Station		
KKFO,		
Coalinga, California		

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

## **ENFORCEMENT BUREAU'S MOTION TO ADD ISSUES**

### **Introduction**

1. On June 4, 2015, the Presiding Judge issued *Order*, FCC 15M-21, instructing the Enforcement Bureau (Bureau) to seek the addition of an Issue to the above-captioned proceeding regarding the ownership and control of Avenal Educational Service, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley), the respective permittees of Stations KAAX (FM) or KYAF (FM).<sup>1</sup> In accordance with the Presiding Judge's instruction, because the parties have not reached a consent agreement concerning these Stations, and for the reasons more fully explained below, the Bureau seeks to add the Issue of Avenal and Central Valley's ownership and control to this proceeding on the basis of its decisional importance to the Issues already designated for hearing.<sup>2</sup>

2. In addition, for the reasons set forth below, the Bureau also respectfully seeks to add the Issue of whether Avenal and Central Valley were qualified applicants at the time they filed their respective applications for Stations KAAX (FM) or KYAF (FM) as this too is of decisional importance to the Issues already designated for hearing. It appears that this question is not presently before the Media Bureau, based on a review of the filings currently pending before it.

### **Motion**

3. *Ownership Issue.* On March 19, 2015, the Presiding Judge ordered Messrs. Zawila and White to submit evidence that establishes the owners, officers, and any other

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<sup>1</sup> See *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015) at 3.

<sup>2</sup> See *id.* The Bureau understands that Mr. Zawila and counsel for Mr. White have begun discussions concerning FM Stations KAAX and KYAF but have not yet reached an agreement between them or with the Bureau.

individuals who control the operations of Avenal and Central Valley.<sup>3</sup> Upon review of Messrs. Zawila's and White's responses to *Order*, FCC 15M-11,<sup>4</sup> the Bureau concluded that the question of who owns and/or controls Avenal and Central Valley remains unsettled. Indeed, as the Bureau noted in its Comments Pursuant To *Orders*, FCC 15M-11 and FCC 15M-17, neither Mr. Zawila's nor Mr. White's pleading affirmatively established the ownership and/or control of either Avenal or Central Valley.<sup>5</sup> The Commission's records likewise failed to illuminate the question.

4. As the Presiding Judge has correctly noted, "questions raised by Mr. Zawila and Mr. White regarding ownership and control over Avenal and Central Valley" are central to the Issues designated in this proceeding.<sup>6</sup> The Bureau agrees with the Presiding Judge and believes that the question of who had the proper authority to make representations on behalf of Avenal and Central Valley concerning the construction and/or operation of Stations KAAX (FM) and KYAF (FM), and who in fact was responsible for ensuring that Avenal and Central Valley complied with Commission's rules concerning the operation of these Stations, is of decisional significance to Issues 113 (a) – (e) designated in the HDO. If, for example, someone other than Mr. Zawila controlled Avenal and Central Valley, and/or was responsible for operating Stations KAAX (FM) and KYAF (FM), then there is a question as to whether Mr. Zawila was properly named in these Issues and whether additional individuals or entities should participate as parties. With a number of discovery tools at its disposal, the Bureau is uniquely positioned to investigate the question of Avenal and Central Valley's ownership and control. Accordingly, the Bureau

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<sup>3</sup> See *Order*, FCC 15M-11 (ALJ, rel. Mar. 19, 2015).

<sup>4</sup> See [Zawila's] Status Report Regarding Verne J. White and Ownership and Control of KAAX and KYAF (Formerly KAJF), filed Apr. 7, 2015 (Zawila's Status Report); [White's] Evidence Regarding Ownership, filed May 4, 2015 (White's Status Report).

<sup>5</sup> See Enforcement Bureau's Comments Pursuant To *Orders*, FCC 15M-11 and FCC 15M-17, filed May 22, 2015.

<sup>6</sup> *Order*, FCC 15M-11 (ALJ, rel. Mar. 19, 2015) at 2.

respectfully seeks to add this Issue to the above-captioned proceeding.

5. *Applicant Eligibility Issue.* During its investigation of the ownership question discussed above, the Bureau discovered that neither Avenel nor Central Valley may have been qualified to hold the permits for Stations KAAX (FM) or KYAF (FM) at the time they submitted their respective applications. As the Bureau explained in earlier filings – and as is substantiated by the Commission’s Consolidated Database System (CDBS) – Stations KAAX (FM) and KYAF (FM) are non-commercial educational (NCE) stations.<sup>7</sup> As such, these Stations are governed by Section 73.503 of the Rules,<sup>8</sup> which in pertinent part sets forth that “a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”<sup>9</sup> It is well-established that an applicant for an NCE FM station, such as those governed by Section 73.503 “must certify its eligibility to own and operate such station *at the time it files its application.*”<sup>10</sup> Indeed, such applicants must “be incorporated or otherwise organized in a form recognized under state law *at the time of filing*” in order to qualify for the NCE FM license.<sup>11</sup> Mr. Zawila and Mr. White both assert that Avenel and Central Valley are

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<sup>7</sup> See, e.g., Enforcement Bureau’s Status Report, filed Nov. 7, 2014, at 2 (EB’s Status Report).

<sup>8</sup> See 47 C.F.R. § 73.503.

<sup>9</sup> *Id.* at § 73.503(a).

<sup>10</sup> *Hammock Environmental and Educational Community Svcs.*, 25 FCC Rcd 12804, 12807 (Sept. 10, 2010) (emphasis added) (citation omitted).

<sup>11</sup> *Applications For Review of Decisions Regarding Six Applications For New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13394 (Aug. 23, 2013); see *Hope Radio of Rolla, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 7754, 7754 (May 14, 2013) (recognizing that to be eligible to hold an authorization for an NCE service, the applicant “must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application”); *WTL Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2475, 2478 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed its application); *Sonido Internacional Cristiano, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2444, 2448-49 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed the application).

California corporations.<sup>12</sup> As such, for either of these entities to have qualified for NCE FM licenses, they must have been organized in a form recognized under California law at the time they filed their respective applications for Stations KAAX (FM) and KYAF (FM). The record strongly suggests they were not.

6. Neither Mr. Zawila nor Mr. White dispute that Avenal filed its application for NCE Station KAAX (FM) in 1989.<sup>13</sup> However, it appears that Avenal was not incorporated until 10 years later, in 1999. As part of Mr. Zawila's submission, he included Avenal's Articles of Incorporation, which are dated January 22, 1999.<sup>14</sup> Under California law, a corporation's existence begins when its articles of incorporation are filed with the Office of the Secretary of State.<sup>15</sup> A copy of the articles of incorporation, duly certified by the Office of the California Secretary of State, is usually conclusive evidence of the formation of the corporation and *prima facie* evidence of its corporate existence.<sup>16</sup> Therefore, Avenal would not have been recognized as organized under California law until January 22, 1999, at the earliest. Indeed, Mr. White admits that Avenal was not incorporated until March 5, 1999.<sup>17</sup> If Avenal was not incorporated or otherwise organized in a form recognized under California law at the time it filed its application for NCE Station KAAX (FM), and thus was not a qualified applicant under Section 73.503(a) of the Commission's rules, then Avenal should never have been granted the authorization for KAAX (FM) designated in the HDO. As a result, the Issues designated in the HDO relating to Avenal's responsibilities for the operation of this Station would be moot.

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<sup>12</sup> See, e.g., Zawila's Status Report at Exhibit 4 at 3-4; White's Status Report at Declaration of Verne J. White at 1-2 and Attachments C and G, thereto.

<sup>13</sup> See, e.g., Zawila's Status Report at Exhibit 1, ¶ 2; White's Status Report at Declaration of Verne J. White at 2.

<sup>14</sup> See Zawila's Status Report at Exhibit A to Exhibit 4, thereto, entitled "Articles of Incorporation of Avenal Educational Services, Inc."

<sup>15</sup> See Cal. Corp. Code §§ 200 (a), (c); 7120.

<sup>16</sup> See Cal. Corp. Code § 209.

<sup>17</sup> See White's Status Report at Declaration of Verne J. White at 2 and Attachment G, thereto.

7. The same holds true for NCE Station KYAF (FM). Both Mr. Zawila and Mr. White assert that Central Valley filed its application for NCE Station KYAF (FM) on October 17, 1998.<sup>18</sup> The Commission's records confirm that Central Valley's application was received by the Commission on this date.<sup>19</sup> Again, the record reflects that Central Valley was not recognized as a California corporation until many years later. Specifically, Mr. Zawila's submission includes Central Valley's Articles of Incorporation which are dated January 26, 2001.<sup>20</sup> Moreover, Mr. White confirms his understanding that Central Valley was incorporated in California on January 29, 2001.<sup>21</sup> Thus, as with Avenal discussed above, if Central Valley was not incorporated or otherwise organized in a form recognized under California law at the time it filed its application for NCE Station KYAF (FM), and was not a qualified applicant under Section 73.503(a) of the Rules, Central Valley should never have been granted the authorization for KYAF (FM) designated in the HDO. The Issues designated in the HDO relating to Central Valley's responsibilities for the operation of this Station likewise would be moot.

8. While the Bureau is hesitant to expand the scope of this proceeding any further, as set forth above, the factual record concerning Avenal's and Central Valley's corporate status at the time they filed their respective applications for Stations KAAX (FM) and KYAF (FM), respectively, is well-developed and undisputed. It is unlikely additional investigation would be needed before the legal question of whether Avenal and Central Valley were qualified applicants could be raised with the Presiding Judge. Accordingly, the Bureau respectfully requests that the Presiding Judge add this Issue of decisional importance to the above-captioned proceeding.

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<sup>18</sup> See Zawila's Status Report at Exhibit 1, ¶ 2; White's Status Report at Declaration of Verne J. White at 1.

<sup>19</sup> See original application for NCE station KYAF, dated October 13, 1998, submitted by Central Valley, attached hereto as Exhibit 1.

<sup>20</sup> See Zawila's Status Report at Exhibit A to Exhibit 4, thereto, entitled "Articles of Incorporation of Central Valley Educational Services, Inc."

<sup>21</sup> See White's Status Report at Declaration of Verne J. White at 1 and Attachment C, thereto.

### Conclusion

9. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge enter an Order adding to the above-captioned proceeding Issues directed to (a) the ownership and control of Avenal and Central Valley and (b) whether Avenal and Central Valley were qualified applicants at the time they filed their applications for Stations KAAX (FM) and KYAF (FM).

Respectfully submitted,

Travis LeBlanc  
Chief, Enforcement Bureau



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June 16, 2015



## CERTIFICATE OF SERVICE

Kerri Johnson, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 16th day of June, 2015, sent copies of the foregoing "ENFORCEMENT BUREAU'S MOTION TO ADD ISSUES" to:

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Chief Administrative Law Judge  
Federal Communications Commission  
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Kerri Johnson